

May 19, 2006

Ann E. Wessel
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Department of Ecology
P.O. Box 47600
Olympia WA 98504-7600

RE: Formal Draft Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit

Dear Ms. Wessel:

The purpose of this letter is to provide joint comments from the Port of Seattle, the Port of Tacoma and the Washington Public Ports Association on the Formal Draft Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit (the "Final Draft Permit"). We appreciate the opportunity to submit these comments.

The following is a section-by-section discussion of our comments.

S4. COMPLIANCE WITH STANDARDS

The Final Draft Permit includes a new sub-section, S4. A, which reads: "In accordance with RCW 90.48.520, the discharge of toxicants to waters of the state of Washington which would violate any *water quality standard*, including toxicant standards, sediment criteria, and dilution zone criteria is prohibited."

The Ports are puzzled why this language is necessary. We read Special Condition S4.B as already prohibiting Permittees from discharging stormwater that would violate state water quality standards, including the requirement under WAC 173-201A-240 that applies to toxicants. S4.A seems to say the same thing as S4.B. The fact sheet does not explain why this duplicative language is necessary, and we believe having such duplicative language is confusing. We suggest deleting either S4.A or S4.B.

Special Condition S4.E provides that compliance with S4.C and S4.D can be demonstrated by compliance with the requirements of the Permit. The Ports support this language, but it doesn't go far enough. This condition should also provide that compliance with water quality standards (referencing S4.A and/or S4.B, depending on which is selected) can be presumed based compliance with the requirements of the permit.

As the Ports stated in their previous comment letter on the Preliminary Permit, the correct basic principle is that compliance with the permit should be presumed to constitute compliance with all existing regulatory requirements for

stormwater. If site-specific information demonstrates that a water quality problem occurs in a receiving water body owing to a discharge from a Permittee's MS3, then the Permit should provide a clearly defined set of actions, review, and approval processes involving both the Permittee and Ecology that will bring the Permittee's MS3 into compliance. This is consistent with the approach that Ecology has successfully taken in other permits, e.g. the Industrial Stormwater General Permit and Boatyard General Permit. In addition, it is simply the most logical and straightforward way to address the potential that an MS3 system may be found to be out of compliance with a regulatory standard, whether MEP, AKART or the water quality standards themselves.

In summary, we propose that the language be amended as follows:

- Delete either S4.A or S4.B, other sections to be renumbered accordingly
- Amend former S4.E (now, S4.D) to read: "In order to meet the goals of the Clean Water Act, to demonstrate compliance with S4.A, S4.B and S4.C and make progress towards compliance with applicable surface water...."

S6. STORMWATER MANAGEMENT PROGRAM FOR CO-PERMITTEES AND SECONDARY PERMITTEES

An overarching concern that was not fixed between the Preliminary and Final Drafts continues to be the deadlines for deliverables, reports and other responsibilities. The Ports, unlike all other Phase I Permittees, are starting from scratch on developing this major program. We anticipate implementing this program will require a full FTE for each Port, at least for the first year.

One thing that would really help with this implementation challenge is if the Permit would sequence the dates to enable a logical progression of tasks. This is necessary because:

- We can't complete the design of the stormwater program until we have substantially completed all drainage mapping
- We can't develop estimates of workload and staffing needs until the design of the program has been completed
- We can't coordinate workload and staffing with the City until estimates of what the workload will be have been developed
- We can't write an interlocal agreement with the City until we've come to agreement on the workload and staffing
- We can't implement the program until we've obtained funding authorization from our Port Commissions.
- We can't implement the program until we've established the legal authority, either by revising tariffs and leases, or other means yet to be determined
- We can't do any monitoring until the monitoring plan is approved by Ecology

- Finally, all these activities, particularly the development of SWPPPs, needs to be coordinated with tenants

As expressed in the Port's comment letter on the Preliminary Draft, we request that all deadlines be moved to a more logical order, consistent with the previously submitted Gantt chart. That chart is attached again for your reference.

Thank you for this opportunity to comment on the Draft Final Permit. If you have any questions concerning the contents of this letter, please contact Marilyn Guthrie for the Port of Seattle ((206) 728-3347) and Cindy Lin for the Port of Tacoma ((253) 428-8672).

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